Defiance Hospital, Inc. *and* District 1199, the Health Care and Social Services Union, SEIU, AFL–CIO, CLC and Office & Professional Employees International Union, Local 514. Cases 8–CA–27724, 8–CA–28943, and 8–CA–29131

January 11, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND BRAME

On March 30, 1998, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified below.[3]

1. The Respondent contends, in its exceptions and a motion to strike, that comments the judge made off the record and in his decision show the judge was biased and prejudiced, and therefore the decision should be struck. We find no merit in the Respondent's contention.

First, regarding the off-the-record comments to one of the Respondent's attorneys, the Respondent did not object on the record at the time the comments were made. See *Canal Electric Co*., 245 NLRB 1090 fn. 2 (1979). Neither did the Respondent comply with Section 102.37 of the Board's Rules by moving the judge to disqualify himself before the filing of the decision. See *Chesapeake & Potomac Telephone Co*., 287 NLRB 588 (1987), and *Top Form Mills*, 273 NLRB 1246 (1984), enfd. 789 F.2d 262 (4th Cir. 1986). Instead, the Respondent raised this contention only after the judge filed an adverse decision. Under the circumstances, we find this contention untimely.

Second, we are satisfied, after a careful review of the record as a whole, that the Respondent was accorded a full and fair hearing, that the judge's findings of fact are supported by the record, and that the judge's conclusions of law are in accord with Board precedent. In so concluding, it is not necessary for us to adopt, or even to parse, each of the judge's characterizations of some of the Respondent's arguments.[4]

Accordingly, we find no merit in the Respondent's exception, and we deny the Respondent's motion to strike the judge's decision and request for a de novo review of the record.

2. The Respondent has excepted to the judge's finding that it violated Section 8(a)(5) by unilaterally announcing a wage increase on January 17, 1997, without affording SEIU District 1199 and OPEIU Local 514 (the joint representative) the opportunity to bargain over the amount of the increase.

The Respondent argues that it did not act unilaterally because it "met with representatives from both the OPEIU and SEIU *before* implementing the wage increase and *before* informing the bargaining unit employees of the wage increase." (Emphasis in original.) The Respondent also relies on the written notice it provided the Unions of the wage increase. For the following reasons, we find no merit in these contentions.

"It is settled law that an employer violates Section 8(a)(5) and (1) if a material change in the conditions of employment is made without consulting with the employees' bargaining representative and providing a meaningful opportunity to bargain." *Ciba-Geigy Pharmaceuticals Division v. NLRB*, 722 F.2d 1120, 1126 (3d Cir. 1983). "An employer must inform the union of its proposed actions under circumstances which at least afford a reasonable opportunity for counter arguments or proposals." *NLRB v. Centra*, 954 F.2d 366, 372 (6th Cir. 1992). "If a policy is implemented too quickly after notice is given, or an employer has no intention of changing its mind, the notice constitutes nothing more than informing the union of a *fait accompli*." Id.

Here, Hospital Administrator Richard Sommer testified that on January 16 and 17, 1997, *after* he had decided to grant a 3-percent wage increase, he met with union representatives for the purpose of "*letting them know what we had done* in terms of the increase and the percentage . . . ." In those meetings, Sommer presented the representatives with copies of two letters that were about to be posted and mailed. One letter was addressed to the employees and one was addressed to the Unions; each was dated January 17, 1997. The letter to the employees announced that "the Hospital will process a three percent across the board wage increase" and that it "will appear on your February 6 paycheck." The letter to the union representatives also advised them of the three-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In Conclusion of Law 2, the judge stated that the Respondent had refused to engage in contract negotiations with the joint representative since September 24, 1996. The correct date is June 6, 1997.

[3] In par. 2(c) of the recommended Order, the judge refers to the 1994 merger. The correct date is 1995. The judge also inadvertently failed to include a "cease-and-desist" remedial provision for his finding that the Respondent violated the Act by failing to furnish the Unions with requested bargaining information. We shall modify the judge's recommended Order and notice to employees accordingly.

[4] For example, while we agree with the judge that the Respondent's 10(b) defense lacks merit, we would not characterize the defense as "frivolous."

percent wage increase and added that they should contact Sommer before January 24 if they had any objections or questions.

In these circumstances, we find that the Respondent presented the Unions with a fait accompli. Sommer's own testimony shows that his meetings with the union representatives were strictly perfunctory, informing them of a decision already made and about to be announced to the bargaining unit employees. Similarly, although Sommer's letter to the Unions purported to give them 7 days to respond, in fact there was no meaningful opportunity for bargaining because Sommer simultaneously issued a letter to employees announcing the wage increase. "By announcing the [wage increase] to the [Unions] at the same time as all other employees, the Respondent essentially ignored the representative status of the employees' bargaining agent. Such failure to acknowledge the [Unions'] proper role in negotiating terms and conditions of employment severely diminished, if not effectively foreclosed, any meaningful opportunity for the [Unions] to exercise [their] authority in any subsequent discussion of this matter." *Roll & Hold Warehouse & Distribution Corp*., 325 NLRB 41, 42 fn. 4 (1997), enfd. 162 F.3d 513 (7th Cir. 1998). See *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013, 1017 ("most important factor" dictating finding that employer's announcement of change was "fait accompli" was that the union was notified at the same time as the employees), enfd. 722 F.2d 1120 (3d Cir. 1983).

Accordingly, for all of the above reasons, we adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by announcing its unilateral decision to grant a wage increase for bargaining unit employees without affording the Unions adequate notice and opportunity to bargain on the amount of the wage increase.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Defiance Hospital, Inc., Defiance, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(d) and reletter the remaining paragraph accordingly.

"(d) Refusing to furnish SEIU District 1199 and OPEIU Local 514 information that is relevant and necessary to the Unions' role as the joint representative of the bargaining unit employees."

2. Substitute the following for paragraph 2(c).

"(c) On request, process all grievances that it refused to process since the May 31, 1995 merger of group 1 members of SEIU Local 3 with SEIU District 1199."

3. Substitute the attached notice for that of the judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to process grievances of group 1 employees above step 2, including arbitration, with SEIU District 1199.

WE WILL NOT refuse to engage in joint negotiations with SEIU District 1199 and OPEIU Local 514 for an agreement to succeed the 1993–1996 agreement that expired December 16, 1996.

WE WILL NOT grant bargaining unit employees a unilateral wage increase, without affording SEIU District 1199 and OPEIU Local 514 the opportunity to bargain on the amount of the increase.

WE WILL NOT refuse to furnish SEIU District 1199 and OPEIU Local 514 information that is relevant and necessary to the Unions' role as the joint representative of the bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain for a new agreement with SEIU District 1199 and OPEIU Local 514 as the joint representative of group 1 and group 2 employees listed in the agreement that expired December 16, 1996, and put in writing and sign any agreement reached.

WE WILL, on request, bargain with SEIU District 1199 and OPEIU Local 514 on the amount of the wage increase unilaterally announced on January 17, 1997.

WE WILL, on request, process all grievances that we refused to process since the May 31, 1995 merger of group 1 members of SEIU Local 3 with SEIU District 1199.

WE WILL promptly furnish to SEIU District 1199 and OPEIU Local 514 all bargaining information they requested on March 10 and 25, 1997.

DEFIANCE HOSPITAL, INC.

Susan E. Fernandez, Esq., for the General Counsel.
G. Roger King & Coleen Deep, Esqs. (Jones, Day, Reavis & Pogue), of Columbus, Ohio, for the Respondent.
Michael Hunter, Esq., of Columbus, Ohio, for District 1199.
Timothy Gallagher, Esq., of Cleveland, Ohio, for OPEIU Local 514.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These cases were tried in Defiance, Ohio, in the first trial on January 16–17, 1997, and a second trial on December 1, 1997. The charge in Case 8–CA–27724 was filed September 20, 1995 (amended December 15, 1995). After the first trial the charge in Case 8–CA–28943 was filed April 9, 1997 (amended May 6, 1997), and the charge in Case 8–CA–29131 was filed June 24, 1997. The first complaint was issued September 12, 1996, and a consolidated complaint was issued July 30, 1997.

The cases involve changing union affiliations of two of the three groups of health care employees at the Defiance Hospital (the Hospital) in Defiance, Ohio. Group 1 comprised about 100 to 110 clerical, maintenance, and other noncertified, nonregistered employees. Group 2 comprised about 75 to 77 LPNs and other technical, licensed, or registered employees. Representation of the third group, the registered nurses, is not involved in this proceeding.

In 1976 Service Employees Union Local No. 3 (Local 3) in Toledo, Ohio, a building services (janitors) union affiliated with Service Employees International Union (SEIU), organized the Group 1 employees. Licensed Practical Nurse and Skilled Hospital Employees Professional and Economic Security Program (LPN-SHEP) organized the Group 2 employees. On May 6, 1976 the NLRB certified Local 3 and LPN-SHEP as the joint representative.

In 1982 Group 2 employees voted to merge LPN-SHEP with Office and Professional Employees International Union (OPEIU). Without objection, the Hospital recognized OPEIU, bargained with that International and Local 3, and executed the 1982–1985 joint agreement. In 1985 the Hospital voluntarily bargained with OPEIU Local 514 (instead the International) as the joint representative with Local 3 and executed the 1985–1988 agreement.

In 1994 the SEIU placed Local 3 in emergency trusteeship because of alleged "financial malpractice" by its Financial Secretary Treasurer Richard Bowles "and approval by Local 3's Executive Board." On August 3, 1994 the SEIU appointed a hearing officer to conduct a hearing on August 18, 1994, to determine whether a merger with SEIU Local 47 and District 1199 "would benefit the members of Local 3."

SEIU Local 47, a Cleveland local, represented over 6000 employees in the building service and allied services industries in the Cleveland and Columbus areas. SEIU District 1199 represented 8000 health care and social service workers in Ohio, including about 1500 in the Toledo and surrounding counties.

In September 1994, before the hearing officer made her recommendations, Administrator Richard Sommer advised SEIU Deputy Trustee Michael Salmon that "the Hospital would prefer to deal with the more traditional sort of local union" rather than with the "aggressive" District 1199. A day or so later Human Resource Director Linda Shaffer telephoned Salmon and reiterated the Hospital's preference for dealing with Local 47. In early 1995 Shaffer called Group 1 Union Steward Patricia Ray to the office and told her that "the Hospital would have no problem if [the Group 1 employees] voted for Local 47, but they did not want to deal with District 1199."

On October 21, 1994, the SEIU hearing officer recommended that Local 3 merge its 1050 building service and allied services members into Local 47 and its 121 health care members (the Hospital's Group 1 employees and some nursing home employees in Toledo) into District 1199. The SEIU's International Executive Board approved her recommendations and on November 4, 1994 International President John Sweeney directed the SEIU deputy trustee to conduct merger votes. In early December 1994 the Local 3 building service employees approved their merger with Local 47.

Some of the Local 3 members at the Hospital expressed a preference for a separate SEIU local charter (which was not available because such a small local was not considered by SEIU to be "viable"), and their first vote about December 20 or 21 was 12 to 7 against their merging with District 1199. But after discussions of the matter in four monthly meetings, Local 3 members met in two well-publicized meetings on May 31, 1995 and voted by secret ballot 29–0 in favor of their merging with SEIU District 1199.

In response, the Hospital has refused to have any dealings with SEIU District 1199, refusing to handle any Group 1 grievances beyond step 2 and to engage in any negotiations in which a staff representative of District 1199 is present. It has granted a unilateral wage increase and has refused to furnish any requested bargaining information either to District 1199 or OPEIU Local 514.

Despite the Hospital's having honored the 1982 vote of Group 2 employees who merged LPN-SHEP with OPEIU without any notice to or participation by Group 1 members of Local 3, and despite the Supreme Court's holding in NLRB v. Financial Institution Employees (Seattle-First National), 475 U.S. 192, 209 (1986), that "the Board exceeded its authority under the Act in requiring that nonunion employees be allowed to vote for affiliation," the Hospital makes the contention, without any supporting precedent, that because Local 3 and OPEIU Local 514 were the joint representative, due process required that OPEIU members be allow to participate in the vote on merging Local 3 members with SEIU District 1199. None of the Local 514 members complained that they should have been included in the vote.

Also without any supporting precedent, the Hospital contends that there was a lack of due process because Local 3 employees were not given "an option to stay in Local 3 or go to Local 47" and "the option to have OPEIU to be their sole representative."

The Hospital further contends that the merger was invalid "due to the lack of continuity of representation" and other "failures to provide due process to members of the bargaining unit," creating a question concerning representation. Finally it asserts a 10(b) defense.

The primary issues are whether the Hospital, the Respondent, unlawfully (a) refused to bargain with SEIU District 1199 and OPEIU Local 514, (b) granted the unit employees a unilateral wage increase, and (c) refused to furnish District 1199 and Local 514 requested bargaining information, violating Section 8(a)(5) and (1) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Hospital, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Hospital, a not-for-profit Ohio corporation, provides health care services at its facility in Defiance, Ohio, where it annually derives over $250,000 in gross revenues and receives goods valued over $5000 directly from outside the State. It admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), (7), and (14) of the

Act and that SEIU District 1199 and OPEIU Local 514 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Joint and Separate Representation

In 1976 SEIU Local 3, a building services (janitors) local in Toledo, Ohio, organized the group 1 employees, and the independent LPN-SHEP organized the group 2 employees at the Hospital in Defiance, Ohio. On May 6, 1976 the Board in Case 8–RC–10015 certified Local 3 and LPN-SHEP as the joint representative of these employees. Group 1 employees are clerical, maintenance, and other noncertified, nonregistered employees. Group 2 employees are LPNs (licensed practical nurses) and other technical, licensed, or registered employees (but not registered nurses represented by the Ohio Nurses Association). (Tr. 23, 221, 271, 298, 355, 689, and 694; G.C. Exhs. 5 p. 49, 6.)

Since that date, groups 1 and 2 employees have been represented both jointly and separately by the two unions and their successors.

From 1976 until 1982, Local 3 represented the employees jointly with LPN-SHEP, negotiating the 1976–1979 and 1979–1982 agreements with the Hospital (R. Exhs. 3 and 4). In 1982 employees in group 2—without notice to or participation by Local 3 members—voted to merge LPN-SHEP with Office and Professional Employees International Union (OPEIU). The Hospital recognized OPEIU as the joint representative with Local 3 and negotiated the 1982–1985 agreement with them. (Tr. 198–200, 431, and 681–682; R. Exh. 5).

Sometime after the 1982 negotiations the Hospital voluntarily recognized OPEIU Local 514 instead of the OPEIU International. Since then, Locals 3 and 514 have jointly negotiated the 1985–1988, 1988–1991, 1991–1993, and 1993–1996 agreements. (Tr. 200, 384, and 438; R. Exhs. 6–8; G.C. Exh. 5).

Meanwhile, the 100 to 110 Local 3 members in Group 1 and the 75 to 77 Local 514 members in Group 2 (Tr. 23, 158, and 300) were represented separately by their own elected stewards and, in the case of Local 514, by their own Local officers at the Hospital. Longtime Local 3 steward Patricia Ray and six other stewards represented the group 1 employees in handling the day-to-day issues of contract administration and their grievances. Without any participation by OPEIU Local 514, these stewards decided if a group 1 grievance was to be referred to Local 3 for arbitration. Local 3 bears the cost of any arbitration case it loses. (Tr. 34, 194–197, 214–216, 236–238, and 322.)

When, however, members of both unions elected Ray to be the chief steward in August 1995 (the third month after their merger with District 1199), she began sitting in on step-3 hearings of Local 514 grievances. She processes a Local 514 grievance at a lower level only when necessary, in the absence of the Local 514 steward. (Tr. 195, 253–254, 257, and 268–269.)

Group 1 members of Local 3 separately elected their own members to the negotiating committee. Their Local 3 staff representative, Richard Bowles, and the OPEIU staff representative were the chief spokesmen in negotiations with the Hospital. Separate ratification by each union was required. (Tr. 227–228, 275, and 436–438).

Under the union-shop and dues-checkoff provisions in the agreements, group 1 employees were dues-paying members of SEIU Local 3 and, since the May 31, 1995 merger discussed below, are dues-paying members of SEIU District 1199. The Hospital continued to send a single check to Local 3 for the dues checked off for section 1 employees ($9 each pay period) and for section 2 employees ($7.72 each pay period). (Tr. 457–459, 476–477, 483, 508–509, 662, 674–675, 678, and 702–705; R. Exh. 27; G.C. Exh. 31.) In this way the Hospital has indirectly turned over the Section 1 dues to District 1199 since the merger.

B. Local 3 Placed Under Trusteeship

On March 9, 1994, the SEIU placed Local 3 (its building services local in Toledo) in emergency trusteeship because of alleged "financial malpractice" by its Financial Secretary-Treasurer Richard Bowles "and approval by Local's Executive Board" (Tr. 20–21; G.C. Exh. 7). On August 3, 1994 the SEIU appointed a hearing officer to conduct a hearing on August 18, 1994 to determine whether a merger with SEIU Local 47 and District 1199 "would benefit the members of Local 3" (G.C. Exh. 10).

As testified at that August 18 hearing, SEIU Local 47 is a Cleveland local that "represents over 6000 employees in the building service and allied services industries in the Cleveland and Columbus areas." As further testified, SEIU District 1199 "represents 8000 health care and social service workers" in Ohio, including about 1500 in "Toledo and surrounding counties." (G.C. Exh. 12 pp. 3–4.)

In September 1994, before the hearing officer made her recommendations, SEIU Deputy Trustee Michael Salmon had a courtesy meeting with Administrator Richard Sommer and Human Resources Director Linda Shaffer. In this meeting Sommer advised Salmon that "the Hospital would prefer to deal with the more traditional sort of local union" rather than with the "aggressive" District 1199. (Tr. 17, 51–54.)

A day or so later Shaffer telephoned Salmon and reiterated the Hospital's preference for dealing with Local 47. Salmon, in turn, reiterated SEIU's position that "this was an internal local union matter." (Tr. 54–55.) On September 24, 1994, Salmon repeated the SEIU's position in a letter to Shaffer, stating that "Our meeting with you was a courtesy. . . to promote an open and honest relationship between the Hospital and the Union," but that the merger decision "is purely an internal union matter. . . . for the good of Local 3's members." (G.C. Exh. 11.)

Salmon concluded the letter by adding: "While I am aware that the Hospital or its attorney may feel you have a stake in this matter, any attempt by the Hospital's administration or other nonunion staff to influence our members regarding this decision will be considered interference in internal union affairs." Nevertheless, in early 1995 Shaffer called group 1 Steward Patricia Ray to the office and told her that "the Hospital would have no problem if [the group 1 employees] voted for Local 47, but they did not want to deal with District 1199" (Tr. 200).

On October 21, 1994, the SEIU hearing officer cited Salmon's report that Local 3 "is virtually insolvent and that it would take several years to train members to assume leadership roles in the Local." She recommended that Local 3 merge its 1050 building service and allied services members into SEIU Local 47 and its 121 health care members (the Hospital's Group 1 employees and some nursing home employees in Toledo) into SEIU District 1199. (G.C. Exh. 12, p. 4 of attached report.)

The hearing officer explained that she made this recommendation because of "Local 47's dominance in the building service industry" and District 1199's "dominance in health care field in Ohio."

The SEIU's International executive board approved her recommendations. On November 4, 1994, International President John Sweeney directed "Deputy Trustee Michael Salmon to conduct a merger vote among the [Local 3] members employed at Defiance Hospital and Glendale Nursing Home with respect to [District 1199] and among the members in the remaining bargaining units with respect to Local 47." (G.C. Exh. 12, p. 1). In early December 1994 the building service members of Local 3 approved their merger with Local 47 (Tr. 62, 174; G.C. Exh. 14).

When Local 3 members at the Hospital first voted on the merger about December 20 or 21, some of them expressed a preference for a separate SEIU local charter (which was not available because such a small local was not considered by SEIU to be "viable"). The first vote was 12–7 against their merger with District 1199. (Tr. 111–112, 130, 156, 187, 192, 259–262, 266, 537–539, and 576.)

On January 13, 1995, Salmon notified the Hospital that SEIU Field Representative Arnold Maurer, who had been appointed by the trustee to serve as SEIU's staff representative there, "has accepted a position with" SEIU Local 47. "I am appointing Ms. Karen Gilliam to succeed Mr. Maurer in representation matters." (G.C. Exhs. 8, 13; Tr. 311–312.)

Meanwhile, during the Local 3 trusteeship, the group 1 stewards continued to handle the day-to-day issues of contract administration and grievances at the Hospital (Tr. 231, 322). On March 1, 1995, Gilliam wrote a letter to Linda Shaffer about a contract issue. She signed her name as organizer of SEIU District 1199. (G.C. Exh. 21.) On March 13, 1995, Shaffer responded stating, before discussing the merits of the issue (G.C. Exh. 22):

> Prior to responding to the Maintenance Worker and Housekeeping issues you raised, I would like to clarify the Hospital's position concerning District 1199. Defiance Hospital has a bargaining unit agreement with Service Employees Union No. 3 and Office and Professional Employees International Union Local 514. All union dues for these groups are forwarded to SEIU Local No. 3, 111 S. Byrne Road, Suite A, Toledo, Ohio 43615. There is no mention in the bargaining agreement of District 1199 representing any employees of Defiance Hospital. Are you acting on behalf of SEIU or some other organization?

Gilliam answered Shaffer's question on April 14. After discussing the contract issue she wrote (G.C. Exh. 23):

> As to the issue of appropriate Union representative, as you know by way of a letter sent to you dated 1/13/95 from Mike Salmon Deputy Trustee, SEIU, Local 3, I have been assigned to represent Defiance Hospital SEIU bargaining unit members. I believe this issue is very clear I am the representative.

On April 27, 1995, Shaffer responded (G.C. Exh. 24):

> The Hospital is agreeable to meet to discuss the Maintenance Worker job description with . . . the appropriate representative of the SEIU Local No. 3 with whom Defiance Hospital has a contract agreement. Pursuant to the advice of legal counsel, Hospital management is not in agreement to meet with a representative of District 1199 as it is not the elected and/or certified union to represent employees of Defiance Hospital.
>
> Any further questions you have concerning this issue should be directed to G. Roger King, legal counsel for Defiance Hospital. . . .
>
> Until this issue is resolved to the Hospital's satisfaction, grievance and/or conciliation meetings will not be held.

(The SEIU did not file a charge alleging that the Hospital unlawful refused to bargain by refusing to deal with its staff representative in processing grievances before the group 1 employees' May 31, 1995 merger with District 1199, discussed below.)

The Hospital contends in its 2/20/97 brief (at 1 fn. 1 and at 25) that "Since the beginning of 1995, the Hospital has made it clear that it did not recognize District 1199 as the certified representative for any of its employees," that the original Section 8(a)(5) refusal to bargain charge filed by District 1199 in this proceeding on September 20 was untimely, and "Therefore, the complaint against the Hospital is barred by Section 10(b)."

The complaint, however, does not allege that the Hospital refused to bargain with District 1199 outside the 6-month limitation period. It alleges that the Hospital unlawfully refused to bargain with District 1199 "[s]ince about May 31, 1995" (the date of the merger). That was less than 4 months before the September 20 charge.

I reject the 10(b) defense as frivolous.

C. Merger with District 1199 and Refusal to Bargain

Despite the Hospital's opposition to dealing with the "aggressive" SEIU District 1199, Group 1 health care members of SEIU Local 3 met in two well-publicized meetings on May 31, 1995 and voted by secret ballot 29–0 in favor of their merging with District 1199, as discussed below.

On June 1, 1995, SEIU Deputy Trustee Salmon notified the Hospital of the unanimous vote and stated, "We expect that the Hospital will continue to honor the current collective-bargaining agreement and resume its obligation to process grievances." (G.C. Exh. 16.)

On June 9, 1995, Counsel Roger King gave the Hospital's misleading response, at least implying that Local 3 was jointly certified with OPEIU Local 514. Although Local 3 was jointly certified instead with the independent LPN-SHEP, not with OPEIU whom the Hospital next recognized, or with OPEIU Local 514 whom it later recognized, King stated in his letter to Salmon, in part (G.C. Exh. 19):

> [T]he Hospital has a collective-bargaining agreement with a jointly-certified bargaining unit consisting of . . . Local 3 and [OPEIU] Local 514. Such joint certification does not contemplate or provide for single certification or recognition of any labor organization. In addition, the collective-bargaining agreement, as a result of such joint certification, does not

permit any party in such agreement to assign their rights to a third party.

I note that the Hospital falsely represented in its February 20, 1997 brief (at 18) that Local 3 was "jointly certified with LPN-SHEP/OPEIU in 1976" and falsely represented in its January 8, 1998, brief (at 19) that it has negotiated all the collective-bargaining agreements "jointly with Local 3 and OPEIU," even though its 1976–1979 and 1979–1982 agreements were negotiated with Local 3 and LPN-SHEP.

Since Counsel King's June 9, 1995 letter, the Hospital has refused to recognize District 1199 as a representative of its group 1 employees and has refused to process group 1 grievances with District 1199 above step 2. As an example, Administrator Sommer stated in a memo dated March 4, 1996, "I am returning the grievance to you at this time because of the lack of an SEIU business agent for representation of your group. The Hospital has not recognized #1199 as an agent for your group." (Tr. 231, 680, 684–686; G.C. Exh. 27.)

Not recognizing District 1199, the Hospital since September 24, 1996, has refused to engage in joint negotiations with District 1199 and OPEIU Local 514 for a new agreement to succeed the 1993–1996 agreement that expired on December 16, 1996. It extended the terms of the expired agreement, but on January 17, 1997 (the last day of the first trial on January 16–17), it announced its unilateral decision to grant a 3-percent wage increase, without any bargaining on the amount of the increase. (Tr. 488–489, 560–564, 585, 614–623, 639–640, 658–660, 681, 687–689, 694–695, and 697–698; G.C. Exhs. 28, 33–35, 37; R. Exhs. 20–22.)

Since then the Hospital has refused to furnish necessary and relevant bargaining information requested by District 1199 on March 10, 1997, and by Local 514 on March 25, 1997. On June 6, 1997, it notified the OPEIU International representative that it was willing to commence negotiations with her "as the Chief Spokesperson for the entire unit" on the condition that "No District 1199 Representatives would be present at the table." The offer was rejected. (Tr. 567–571, 598, 602, 616–623, 628–630, 644–645, and 664–665; G.C. Exhs. 36–40.)

D. The Hospital's Defenses

Because of contrary legal precedents foreclosing such a defense, the Hospital does not defend its actions in refusing to honor the unanimous 29–0 vote to merge the health care employees with SEIU District 1199 by contending that it opposes dealing with the "aggressive" District 1199.

As the Board held in *Sullivan Bros. Printers*, 317 NLRB 561, 562–563 (1995), the Supreme Court recognized in *NLRB v. Food & Commercial Workers Local 1182 (Seattle-First National Bank)*, 475 U.S. 192, 199 fn. 5 (1986) that "increased financial support and bargaining power" are "ordinary, valid reasons for affiliations and mergers." The Board then held, citing *Insulfab Plastics*, 274 NLRB 817, 823 (1985):

> In sum, as we have stated, "[t]he notion that an organization somehow loses its identity and becomes transformed . . . because it acquires more clout and becomes better able to do its job is an absurdity and one which flies squarely in the face of a clearly stated congressional objective."

In the absence of any legal justification for defending its refusal to have any dealings with the "aggressive" SEIU District 1199, evidently because of District 1199's anticipated increased bargaining power, the Hospital instead asserts various other defenses that I find have no merit.

1. Nonmembers not voting on merger

The Supreme Court held in *Seattle-First*, above, 475 U.S. at 200, 209 (1986), that "the Board exceeded its authority under the Act in requiring that nonunion employees be allowed to vote for affiliation" and that "as long as continuity of representation and due process were satisfied, affiliation was considered an *internal matter* [emphasis added] that did not affect the union's status as the employees' bargaining representative, and the employer was obligated to continue bargaining with the recognized union."

Yet the Hospital contends in its February 20, 1997 brief (at 2–3), without any supporting precedent, that "As members of the jointly certified party, OPEIU employees in the bargaining unit should have been permitted to vote on the merger because it clearly affects the overall identity of the certified representative and, in turn, the manner in which members will be represented in dealings with the Hospital."

In the absence of any supporting evidence to support this contention, the Hospital in its February 20, 1997 brief (at 24 fn. 14) goes outside the record and asserts that OPEIU "may not want to be jointly certified with District 1199" and "sees District 1199 as a substantially different entity."

Also outside the record and contrary to the credited testimony of SEIU Representative Gilliam and Steward Ray that none of the Local 514 members objected to the merger vote or being excluded from the vote (Tr. 210, 330), the Hospital asserts in the brief (at 24) that it "is also aware that OPEIU did not originally favor the merger and that many employees in the bargaining unit are unhappy with the prospect of being jointly represented by District 1199."

Further going outside the record, the Hospital asserts (at 8 fn. 6): "Indeed, shortly after the vote, the Hospital received information suggesting that OPEIU and the OPEIU members in the bargaining unit were opposed to being represented by District 1199, and would have voted against the merger had they been given the opportunity."

This distortion of the record does not provide any merit to the contention.

Based on the Supreme Court's holding in Seattle-First that "the Board exceeded its authority under the Act in requiring that nonunion employees be allowed to vote for affiliation" and in view of the precedent the Hospital itself set in 1982 by recognizing and bargaining with OPEIU—even though members of Local 3, which was jointly certified with the independent LPN-SHEP, were not given notice and did not participate in the vote to merge LPN-SHEP with OPEIU—I find that Local 3 was not required to permit OPEIU members, nonmembers of Local 3, to participate in the merger vote.

I find that the merger of the Group 1 health care members of SEIU Local 3 with SEIU District 1199 was an internal union matter. I reject this nonmembers-not-voting defense for the Hospital's refusal to recognize and bargain with District 1199.

2. Lack of continuity of representation

The Hospital's contention in its February 20, 1997 brief (at 15), that the merger with SEIU District 1199 is "invalid because of a lack of continuity between the pre- and post-merger representative," is lacking in merit.

There was no change in the representation at the Hospital during the trusteeship of Local 3, except for the replacement of

Richard Bowles in Local 3's Toledo office and the servicing of the group 1 employees by Arnold Maurer (later Karen Gilliam) and Michael Salmon (Tr. 34, 60–61, 67, 231, and 248–249). Bowles, as Local 3's staff representative, had been the only Local 3 officer who had any contact with the group 1 employees (Tr. 218).

Since the May 31, 1995 merger of the group 1 employees with District 1199, there has been very little change in the representation of these health care employees, apart from the Hospital's refusal to deal with any staff representative of District 1199.

The group 1 elected stewards, Patricia Ray and others, still handle the day-to-day issues of contract administration and employee grievances. The group 1 employees still have their own elected members on the negotiating committee, which has met several times since the merger and has drawn up proposals for upcoming negotiations. The group 1 employees must separately ratify any joint agreement before it become effective. District 1199 staff representatives have inquired about how the contract negotiations were conducted and have indicated no change. (Tr. 215, 217, 226–229, 286, 324–325, 566–567, and 579.)

The Local 3 health care members at the Hospital were automatically accepted as District 1199 members, without filling out new applications or paying any initiation fees. They still pay the $9 biweekly dues, which are checked off by the Hospital and turned over (indirectly) to District 1199. (Tr. 214, 230.)

Virtually the only change in the representation at the Hospital is the identity of the staff representatives and the assistance that District 1199 would provide in negotiations, grievance handling above step 2, and arbitration (Tr. 243, 245—252, 283, 286–287, 295, 437–438, 613, and 680).

The stewards' title has been changed to delegates, but they still referred to themselves as stewards (Tr. 217). The stewards were not permitted to attend Local 3 executive board meetings but, after Ray was elected chief steward, she is a member of the District 1199 executive board. The stewards are permitted to attend the District 1199 general assembly meetings (Tr. 222–224, 268, and 559).

The Hospital contends in its February 20, 1997 brief (at 19–20) that "there is a striking resemblance between the situation that was presented to the Board in *Quality Inn Waikiki (Waikiki)*, 297 NLRB 497 (1989), and the factual situation that presently exists at the Hospital" and that "The parallels between *Waikiki* and the instant action are simply undeniable." To the contrary, that case is clearly distinguishable on its facts.

In *Waikiki* the Board held (297 NLRB at 497 fn. 1) that the changes "under the trusteeship" were extensive and that "the trusteeship and subsequent merger created sufficiently dramatic changes that altered the identity of the represented organization to the extent that it raised a question concerning representation."

In that case (297 NLRB at 497 fn. 1, 498–500 fn. 10) there were no union members at the Quality Inn Waikiki hotel from December 1983, when Local 555 (a "fully functioning" local union representing employees at class B hotels) was placed under trusteeship, and May 1985 when a vote was held on merging Local 555 with Local 5 (a class A hotel union). During the year and a half of the trusteeship before the merger vote, the Local 5 secretary-treasurer was the Local 555 trustee. He and his administrative assistant conducted all of Local 555's business and Local 5's business agents serviced the Local 555 bargaining units.

As pointed out in the General Counsel's February 20, 1997 brief, the administrative law judge concluded in *Waikiki* that the sole purpose of the trusteeship was to facilitate the merger. "Unlike the present case, the post-merger labor organization was not in the same dire financial circumstances due to the criminal acts of the local leadership. . . . The trusteeship imposed in the present matter was obviously for good cause precipitated by the criminal acts of a Local officer and years of neglect of membership"—referring to Bowles' 1-year prison sentence, grievances over 6 years old not being processed, etc. (Tr. 120–121).

Moreover in *Waikiki* (197 NLRB at 500 fn. 10), Local 555 not only had no members at the Quality Inn hotel, but it had no contract with Quality Inn and Quality Inn never recognized it. As nonmembers of Local 555, the hotel employees were not permitted to vote in the merger election.

In sharp contrast, Local 3 had between 100 and 110 members in group 1 at the Hospital. By the time of the May 31, 1995 merger, when these members voted 29–0 in favor of their merging with District 1199, their stewards had represented them at the Hospital for 19 years (since the joint 1976 joint certification) in handling the day-to-day issues of contract administration and grievances. As held in *News/Sun Sentinel Co. v. NLRB*, 890 F.2d 430, 432 (D.C. Cir. 1989), "Continuity [of representation] is evidenced by the maintenance of traces of a preexisting identity and the retention of autonomy over the day-to-day administration of bargaining agreements."

Thus, unlike *Waikiki*, which involved the merger of one local into another and the representation of nonmember employees in a hotel that had not recognized the union, the present case involves continuity of representation of employees who have been represented by their own stewards for many years. That representation continued both after the March 9, 1994 trusteeship of Local 3 and after the May 31, 1995 merger of these health care employees with District 1199.

As found, there was no change in the representation at the Hospital during the trusteeship, except for the replacement of Richard Bowles, Local 3's staff representative. After the merger, virtually the only change in the representation of these health care employees at the Hospital has been the identity of the staff representatives and the assistance that District 1199 (with "dominance in health care field in Ohio") would provide in negotiations, grievance handling above step 2, and arbitration.

The Hospital also contends in its February 20, 1997 brief (at 18) that the greater membership of District 1199 results in discontinuity of representation. The Board, however, recently rejected such a contention in *CPS Chemical Co*., 324 NLRB 1021 (1997), involving the affiliation of a 30-member independent association with a 550-member local of the 85,000-member OCAW International Union. The Board held: "We also agree with the judge's finding that contracts will be negotiated in much the same way under [the local] as they were under the [association], but with greater expertise *as a result of the participation of an OCAW International Representative* [emphasis added]."

The Board then cited the Supreme Court's holding in *Seattle-First*, above, 475 U.S. at 199 fn. 5:

> A local union may seek affiliate with a larger organization for a variety of reasons. The larger organization may provide bar-

> gaining expertise or financial support, or may compensate for a lack of leadership within the local union. . . . The Board has recognized that a union "must remain largely unfettered in its organizational quest for financial stability and aid in the negotiating process."

The Hospital points out in its February 20, 1997 brief (at 18) that Local 3 was headquartered in Toledo, only 55 miles from Defiance, whereas District 1199 is headquartered in Columbus, about 150 miles from the Hospital. It ignores the fact that at the time of trusteeship, District 1199 represented about 1500 health care and social service workers in Toledo and surrounding counties. The office of the OPEIU staff representative is in Fredericktown, Pennsylvania, about 320 miles from Defiance, Ohio (Tr. 613). Local 47 has opened an office in Toledo (Tr. 576), but there is no evidence that any group 1 employee has ever attended an out-of-town union meeting.

The present case involves a group of health care employees who continued to represent themselves through their elected stewards after the merger. By a unanimous 29–0 vote to merge with District 1199, the dominant SEIU health care union in the State, these SEIU Local 3 members—after the removal of their Local 3 staff representative Bowles and the breakup of Local 3—were evidently seeking assistance in their representation as before, for increased bargaining power in negotiations and expertise in handling unresolved grievances and arbitration. These were "ordinary, valid reasons for affiliations and mergers." *Sullivan Bros. Printers*, above, 317 NLRB at 562–563.

Citing the Supreme Court's holding in *Seattle-First*, 475 U.S. at 206, the Board held in *May Department Stores Co*., 289 NLRB 661, 665 (1988), enfd. 897 F.2d 221 (7th Cir. 1990), that the general test for determining continuity of representative is whether the affiliation of a bargaining representative with another labor organization produces a change that is "sufficiently dramatic to alter the union's identity." The Board has consistently held that a respondent has the burden of proof that continuity of representative was lost as a result of a merger or affiliation. *CPS Chemical*, supra at fn. 7.

I find that there was no dramatic change in the representation of the Group 1 health care members of SEIU Local 3 after their May 31, 1995 merger with SEIU District 1199. I therefore find that there was continuity in their representation at the Hospital.

3. Lack of due process

On May 31, 1995, after group 1 members of Local 3 discussed the proposed merger with District 1199 at 4 monthly membership meetings, SEIU Deputy Trustee Michael Salmon held a well-publicized merger election. In meetings from 1 to 2 p.m. and from 7 to 8 p.m. the members voted by secret ballot. The ballot read (G.C. Exh. 26):

> ____ I approve of the merger of The Health Care members of Local #3 with District 1199.
>
> ____ I do not approve of the merger of The Health Care members of Local #3 with District 1199.

The vote was 29–0 in favor of the merger (Tr. 67, 86, and 206). Although there were no employee complaints about the vote (Tr. 210, 330), the Hospital contends in its brief (at 3) that "the merger is invalid" for "a failure to provide due process to members in the bargaining unit."

The Hospital does not fault the great care Salmon took (Tr. 70–81, 85–86, 155, 160, 172–173, 201–206, and 378–379) in conducting a fair election, with two exceptions.

First, it distorts the record by contending in its February 20, 1997 brief (at 22) that "the Deputy Trustee did not provide sufficient time for employee questions and discussion prior to the vote." To the contrary—besides the discussions of the proposed merger at four monthly membership meetings before the merger election—Salmon asked for questions at each of the two voting sessions. He answered general questions about the merger and District 1199 Ohio Director David Regan answered questions relating to District 1199. After all the questions were answered, before handing out the ballots, Salmon asked: "Does anybody have any more questions? Is there anything else anybody's got to say? And if you don't, then we're going to go ahead and vote." (Tr. 75–77, 85, 154–156, 160, and 204–205.) There is no contrary evidence on which the Hospital could rely in making the contention of insufficient time.

Second, the Hospital contends (at 22) that the secret ballot process was "tainted" because Salmon did not provide voting booths and the employees instead voted at tables out in the open. The undisputed evidence is that the employees were "spread out" at four large tables and that Salmon did not observe any voters looking at someone else's ballot. Neither he nor Steward Ray, acting as an election observer at the 7 p.m. merger meeting, saw any irregularities in the voting. (Tr. 72–73, 78, 151–155, and 201–204.) The Board has long held that the failure to provide a voting booth does not invalidate a merger vote in the absence of evidence that individuals observed others voting or that ballots had been tampered with. *Sullivan Bros. Printers*, above, 317 NLRB at 563 fn. 5.

Regarding notice of the May 31, 1995 election, the Hospital concedes in its February 20, 1997 brief (at 7, 22) that "Notice of the vote was sent [by mail] to the Local 3 members on May 16," but cites Salmon's testimony that "Several of the notices were returned unopened." It ignores the undisputed evidence that for about 2 weeks before the election, Steward Ray had a copy of the notice posted on the bulletin board alongside her note, handwritten with a marker, stating "SEIU," a "Very Important Union Meeting," the date, time, and place, and her message, "Please Attend" (Tr. 69, 138–139, and 208–210; G.C. Exh. 15).

Even in the absence of a notice being mailed to the membership, the court held in *News/Sun Sentinel*, above, 890 F.2d 430, 433: "An announcement on the composing room bulletin board and two Local 895 meetings afforded the Company's employees adequate notice of the [merger] election." I find that adequate notice was given.

The Hospital contends in the brief (at 7, 21) that there was "the utter lack of due process" because "a copy of District 1199's Bylaws or Constitution was not mailed to Local 3 members in advance of the vote." Copies of the bylaws as well as other literature about District 1199 were made available at the February membership meeting and each of the members at the meeting received a copy of the bylaws. There is no evidence that any other Local 3 employee had expressed any interest in seeing or having a copy of the bylaws. (Tr. 322–323, and 361–363; G.C. Exh. 4.)

Moreover, the Local 3 membership was given repeated opportunities to learn the issues involved in the proposed merger. At the January and April membership meetings, SEIU Deputy Trustee Salmon, District 1199 Ohio Director Regan, and SEIU Representative Gilliam (replacing Arnold Maurer) were available to answer their questions. At the February and March meeting, one or more of them were present to answer the

merger questions. (Tr. 206–207, 262–267, 311–314, 323–326, 358–362, 366–367, and 372.)

The Hospital's principal contention regarding lack of due process, however, was the SEIU's failure not only to permit OPEIU members to vote in the Local 3 members' merger election, as discussed above, but also SEIU's failure to offer the Local 3 employees the alternative of voting for one of the unions the Hospital favored for representing the employees.

At the trial the Hospital took the following position (Tr. 108):

> MR. KING: Yes. With respect to due process, it's our theory of the case that the Defiance Hospital employees in Local 3 were not given due process, because they were not given the option . . . to stay in Local 3 or go to Local 47.

In response to the Local 3 or Local 47 option theory, the General Counsel contends (brief at 39–40) that this is "an internal union matter" and that the SEIU followed its own Constitution and Bylaws (G.C. Exh. 2, art. 13, sec. 3, p. 26) in deciding that in the best interest of the Local 3 membership, the janitors (building service workers) should vote on whether to merge with Local 47 and the health care members, on merging with District 1199. To accept the Hospital's contention "would be tantamount to allowing [the Hospital] to reach in and rewrite the International's Constitution and Bylaws."

Local 3 no longer exists (Tr. 160). All Local 3's officers had been removed over a year before the Hospital's Group 1 health care members of SEIU Local 3 voted to merge with SEIU District 1199 on May 31, 1995 (G.C. Exh. 8), and the bulk of its membership (the building service employees) had merged with Local 47 about 6 months before. SEIU Deputy Trustee Salmon credibly testified that Local 47 was "content to take the building service workers" and was "no longer interested in representing people at Defiance Hospital" (Tr. 538).

In the absence of any complaint by Local 3 members, I find it obvious that the Hospital was concerned with its own interests, not the due process rights of the employees. As the Supreme Court held in *Seattle-First*, above, 475 U.S. at 209, "To allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to [industrial peace]." *Brooks v. NLRB*, 348 U.S. 96, 103 (1954).

The Hospital further contends in the brief (at 6): "Likewise, bargaining unit members were not given the option to have OPEIU be their sole representative."

The Hospital offers no supporting precedent for holding that an International, when giving members of one affiliate an opportunity to merge with another affiliate, is required to give the members the option of abandoning the International. In the absence of a question concerning representation, I reject the defense that due process required an option of voting for sole representation by OPEIU.

The Hospital, citing *Seattle-First*, 475 U.S. at 199, in the brief (at 20), points out that "Due process typically involves providing union members (i) notice of the election and meetings regarding the proposed merger, (ii) adequate opportunity for discussion, and (iii) a right to vote, with reasonable precautions to maintain ballot secrecy." As found, SEIU provided (i) proper notice and (iii) a secret-ballot election.

Concerning (ii), "adequate opportunity for discussion," Local 3's membership at the Hospital was given repeated opportunities to learn the issues involved in the proposed merger, at four monthly membership meetings and at the merger election before the voting. The Hospital, however, contends in its brief (at 7) that this amounted to District 1199 being "thrust upon" the Local 3 employees at the Hospital.

To the contrary, the unanimous 29–0 vote indicates that on learning the prospective benefits from merging with the dominant SEIU health care union in the State—contrary to the Hospital's preference for a less aggressive union—the Local 3 membership was accepting the SEIU's determination that the proposed merger would be to their best interest.

I reject the Hospital's defense that the Local 3 members were deprived of due process.

E. Concluding Findings

Having found that the requirements of continuity of representation and due process were met, I find that the May 31, 1995 merger of the Group 1 health care members of SEIU Local 3 with SEIU District 1199 was a valid merger and that, contrary to the Hospital's contention in its February 20, 1997 brief (at 3), the merger did not create a question concerning representation.

I therefore find that the Hospital was obligated to recognize and bargain with District 1199 as a joint representative with OPEIU Local 514 of the bargaining unit of groups 1 and 2 employees and to recognize and bargain with a staff representative of District 1199, in place of the Local 3 staff representative before the trusteeship of Local 3, in assisting the group 1 stewards in negotiations, grievance handling above step 2, and arbitration.

Accordingly I find that the Hospital has unlawfully refused to bargain in violation of Section 8(a)(5) and (1) of the Act by engaging in the following conduct.

1. Refusing since June 9,1995 to recognize and bargain with SEIU District 1199 in processing grievances of group 1 employees above step 2, including arbitration.

2. Refusing since September 24, 1996, to engage in joint negotiations with SEIU District 1199 and OPEIU Local 514 for a collective-bargaining agreement to succeed the 1993–1996 agreement that expired December 16, 1996.

3. Announcing on January 17, 1997, its unilateral decision to grant a wage increase for groups 1 and 2 bargaining unit employees, without affording SEIU District 1199 and OPEIU Local 514 the opportunity to bargain on the amount of the increase.

4. Refusing since March 14, 1997, to furnish bargaining information, as requested by SEIU District 1199 on March 10, 1997 and by OPEIU Local 514 on March 25, 1997. The Hospital does not dispute the allegation that the requested information was necessary and relevant for bargaining.

CONCLUSIONS OF LAW

1. By refusing since June 9, 1995, to recognize and bargain with SEIU District 1199 in processing grievances of group 1 employees above step 2, including arbitration, the Hospital has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(2), (6), (7), and (14) of the Act.

2. By refusing since September 24, 1996, to engage in negotiations for a new agreement with SEIU District 1199 and OPEIU Local 514 as the joint representative of the bargaining unit of group 1 and group 2 employees listed in their 1993–1996 agreement, which expired on December 16, 1996, the Hospital has violated Section 8(a)(5) and (1).

3. By announcing on January 17, 1997, its unilateral decision to grant a wage increase for the bargaining unit employees, without affording SEIU District 1199 and OPEIU the opportunity to bargain on the amount of the increase, the Hospital violated Section 8(a)(5) and (1).

4. By refusing since March 14, 1997, to furnish bargaining information, as requested by District 1199 on March 10, 1997, and by OPEIU Local 514 on March 25, 1997, the Hospital has violated Section 8(a)(5) and (1).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Defiance Hospital, Inc., Defiance, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to process grievances of group 1 employees above step 2, including arbitration, with SEIU District 1199.

(b) Refusing to engage in joint negotiations with SEIU District 1199 and OPEIU Local 514 for an agreement to succeed the 1993–1996 agreement that expired December 16, 1996.

(c) Granting bargaining unit employees a unilateral wage increase, without affording SEIU District 1199 and OPEIU Local 514 the opportunity to bargain on the amount of the increase.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain for a new agreement with SEIU District 1199 and OPEIU Local 514 as the joint representative of the bargaining unit of group 1 and group 2 employees listed in the 1993–1996 agreement, which expired on December 16, 1996, and if an understanding is reached, embody the understanding in a signed agreement.

(b) On request, bargain with SEIU District 1199 and OPEIU Local 514 on the amount of the wage increase unilaterally announced on January 17, 1997.

(c) On request, process all grievances that it refused to process since the May 31, 1994 merger of group 1 members of SEIU Local 3 with SEIU District 1199.

(d) Promptly furnish to SEIU District 1199 and OPEIU Local 514 all bargaining information they requested on March 10 and 25, 1997.

(e) Within 14 days after service by the Region, post at its facility in Defiance, Ohio, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 9, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."